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7 **THE DISTRICT COURT OF GUAM**

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 JOHN D. WALKER,
aka JON WALKER, and
HANSEN HELICOPTERS, INC.,

12 Defendants.

CRIMINAL CASE NO. 18-00010-1
CRIMINAL CASE NO. 18-00010-6

**ORDER GRANTING MOTION TO
DISMISS PETITION OF INTEREST
AND GRANTING LEAVE TO AMEND
PETITION**

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14 Before the court is the government's Motion to Dismiss Petitioner Pacific Spotters
15 Corporation's Petition of Interest/Request for Hearing or, In the Alternative, Motion for Expedited
16 Discover (ECF No. 1966) ("Motion").

17 **I. BACKGROUND**

18 On January 8, 2021, Defendants John D. Walker and Hansen Helicopters, Inc. were
19 charged with, among other charges, Aircraft Parts Fraud, Wire Fraud, and Conspiracy to Commit
20 Wire Fraud in violation of 18 U.S.C. § 38(d)(1)(A), 18 U.S.C. § 1349, and 18 U.S.C. §§ 1343 &
21 1346, respectively. *See* ECF No. 862. In the Second Superseding Indictment, there was also a
22 Notice of Forfeiture, giving notice to Defendants that the United States intends to pursue
23 forfeiture proceedings on certain property owned by Defendant. At issue in this proceeding is the
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1 following property:

- 2 • A seized helicopter with the FAA registration number N500LA
3 (currently registered as RPC-4915)
- 4 • A seized helicopter with the registration number RPC-4910 (“the
Helicopters”)

5 On September 29, 2022, Defendants Walker and Hansen Helicopters and the Government
6 filed a Stipulation for Preliminary Order of Forfeiture (*see* ECF No. 1812) (“the Stipulation”),
7 and the court approved said stipulation the same day (*see* ECF No. 1813). Therein, the court
8 ordered that “[a]ny person, other than the [defendants], asserting a legal interest in the . . .
9 Properties may, within thirty days of the final publication of notice or receipt of notice,
10 whichever is earlier, petition the court for a hearing without a jury to adjudicate the validity of
11 his/her alleged interest in the . . . Properties, and for an amendment of the order of forfeiture,
12 pursuant to 21 U.S.C. §853.” Order at 4, ECF No. 1813.

13 Third-party claimant Pacific.Spotters timely petitioned the court to adjudicate its interest
14 on June 13, 2023. *See* ECF No. 1954 (“the Petition”). Therein, Pacific.Spotters asserts that it has
15 an ownership interest in the Helicopters. The government filed a Motion to Dismiss Petitioner
16 Pacific.Spotters Corporation’s Petition of Interest/Request for Hearing or, In the Alternative,
17 Motion for Expedited Discovery. *See* ECF No. 1966 (“the Motion”).

18 In the Motion, the government makes two arguments for dismissal of the Petition. First,
19 the government argues that the Petition fails to state a claim under 21 U.S.C. § 853(n). Second,
20 the government argues that Pacific.Spotters is an alter ego of Defendants and is therefore not
21 “[a]ny person, other than the . . . Defendants,” which means it is bound by the Stipulation.
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1 **II. LEGAL STANDARD**

2 Section 853(n)(3) of Title 21 of the United States Code states,

3 The petition shall be signed by the petitioner under penalty of perjury and shall
4 set forth the nature and extent of the petitioner’s right, title, or interest in the
5 property, the time and circumstances of the petitioner’s acquisition of the right,
6 title, or interest in the property, any additional facts supporting the petitioner’s
7 claim, and the relief sought.

8 **III. DISCUSSION**

9 Cherry A. C. Espion, the Corporate Secretary of Pacific.Spotters, signed the Petition
10 under penalty of perjury. *See* Pet. at 2, ECF No. 1954. The Petition states that Pacific.Spotters’
11 interest is an ownership interest, and that it acquired this interest in November 2018.

12 The Petition states the nature (i.e., ownership), but not the extent of its interest in the
13 Helicopters. The statute requires both. The Petition states the time (i.e., November 2018), but not
14 the circumstances of its acquisition of its ownership interest. Again, the statute requires both.
15 The Petition also does not specify what relief is sought beyond that the court “set a hearing for an
16 ancillary proceeding to determine the forfeitability of these seized helicopters.” Pet. at 2, ECF
17 No. 1954. The Petition should state what relief will be sought by Pacific.Spotters via the
18 ancillary proceeding. Finally, there are no “additional facts supporting the petitioner’s claim”
19 alleged, leaving the court in the dark about the grounds upon which Pacific.Spotters seeks to
20 assert its interest in the Helicopters. Because the Petition does not satisfy the requirements of
21 21 U.S.C. § 953(n)(3), the Motion is hereby GRANTED.

22 Pacific.Spotters has asked that it be allowed to amend its Petition if the court finds it does
23 not meet the pleading requirements of § 853(n)(3). *See* Resp. at 7, ECF No. 1997.¹ Because the
24 deficiencies are somewhat minor, the court hereby grants this request and gives Pacific.Spotters

¹ The page citations throughout this Order are based on the page numbering provided by the CM/ECF system.

1 the opportunity to amend its Petition. *See United States v. Swartz Fam. Trust*, 67 F.4th 505, 519
2 (2nd Cir. 2023) (permitting amendment in part when defect was deficient due to a “technical
3 issue”); *United States v. Furando*, 40 F.4th 567, 579–80 (7th Cir. 2022) (permitting amendment
4 of petition because 21 U.S.C. § 853(o) requires liberal construction of § 853(n) to effectuate §
5 853’s remedial purposes and § 853(n) is “the only appropriate route for relief”). Any amended
6 petition that Pacific.SpotTERS elects to file shall be filed no later than August 9, 2023.

7 The government has requested that, if the court grants the motion to dismiss and permits
8 Pacific.SpotTERS to amend its Petition, that discovery be permitted to resolve the issue of whether
9 Pacific.SpotTERS is an alter ego of Defendants Walker and/or Hansen Helicopters. Reply at 7–8,
10 ECF No. 2009. The court concurs with the government that, if Pacific.SpotTERS is an alter ego of
11 Defendant Walker, it may not defeat forfeiture of the Helicopters by asserting an ownership
12 interest. *See* Stipulation ¶ 6, ECF No. 1812 (“Defendant John D. Walker . . . stipulate that . . .
13 the United States has established that the [] Helicopters . . . are property constituting, or derived
14 from, any proceeds that Walker *or Walker’s alter egos* obtained, directly or indirectly, as the
15 result of the aircraft parts fraud . . . or . . . wire fraud and conspiracy to commit wire fraud.”)
16 (emphasis added). The court concurs with Pacific.SpotTERS that its evidentiary rulings during trial
17 are not preclusive on this issue. *See* Resp. at 10–11, ECF No. 1997. As such, should
18 Pacific.SpotTERS file an amended petition that satisfies the requirements of § 853(n)(3), the court
19 will GRANT the government’s request and permit discovery so that this issue can be resolved on
20 a motion for summary judgment or a hearing on an amended petition. *See* Fed. R. Crim. P.
21 32.2(c)(2)(B).²

22 The hearing on the motion to dismiss set for August 8, 2023 is hereby VACATED. The
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24 ² The government may file a new motion to dismiss any amended petition that is filed, but if said motion presents matters outside the amended petition, it will be treated as a motion for summary judgment. *See* Fed. R. Civ. P. 12(d).

1 court sets a status hearing for August 16, 2023 at 8:00 a.m.³ The government shall meet and
2 confer with Pacific.Spotters before the hearing about discovery deadlines. If no amended petition
3 is filed by August 9, 2023, however, the August 16, 2023 hearing shall be automatically vacated.

4 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Aug 02, 2023

24 ³ The proceeding shall be in-person for on-island counsel. Off-island counsel may participate via Zoom.